



CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

Setti D. Warren
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Public Hearing Date:	January 11, 2011
Land Use Action Date:	March 22, 2011
Board of Aldermen Action Date:	April 4, 2011
90-Day Expiration Date:	April 5, 2011

DATE: January 7, 2011

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development
Eve Tapper, Chief Planner for Current Planning ET
Alexandra Ananth, Senior Planner

SUBJECT: **Petition #268-02(2), of DANIEL HAVERTY/KENMORE REALTY CORPORATION for a SPECIAL PERMIT/SITE PLAN APPROVAL for a restaurant having over 50 seats (increase from 48 to 76 seats) and to waive the additional number of parking spaces (3) required for a restaurant located at 1349 WASHINGTON STREET, Ward 3, on land known as SBL 33, 12, 1, in a district zoned Business 1. (Ref: Sec 30-24, 30-23, 30-11(d)(9), 30-19(c)(2), (3), and (d), 30-19(m) of the City of Newton Rev Zoning Ord, 2007.**

CC: Mayor Setti D. Warren

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



EXECUTIVE SUMMARY

The Cherry Tree Bar & Grille is proposing to expand the existing 48-seat restaurant by an additional 28 seats for a proposed total of 76 seats, utilizing the adjacent vacant retail space to the east, formerly occupied by International Dancesport Studios. The existing restaurant obtained a special permit from the Board of Aldermen in 2002 (BO #268-02, *SEE “ATTACHMENT A”*) for a seven-stall parking waiver when it moved from its former location at 1359 Washington Street to its current location at 1349 Washington Street. The existing restaurant has no on-site patron parking, but is located adjacent to a large municipal parking lot. In order to increase the size of the restaurant to 76 seats today, the petitioner must amend the existing special permit to allow for a restaurant with more than 50 seats, and for an additional three-stall parking waiver, bringing the total parking waiver to ten stalls.

The subject property is located in a multi-tenant commercial building in the heart of the West Newton commercial village center in the Business 1 zoning district. The expansion of a restaurant in this location is consistent with the 2007 *Newton Comprehensive Plan*, which supports strengthening viable businesses that contribute to the vitality of Newton’s village centers. The goals of the *Comprehensive Plan* to maintain a desirable quality of life would be further supported if the proposed business offered incentives for employees and customers to take advantage of alternative forms of transportation to get to the site. Further, the petitioners should demonstrate how surrounding neighborhoods will benefit from the proposed petition.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When considering this request, the Board should consider whether:

- the expanded restaurant use with more than 50 seats will increase the vitality of the West Newton village center and complement other uses in the immediate vicinity without having an adverse effect on parking, traffic and circulation;
- literal compliance with parking requirements is impracticable due to the size of the lot and the location of the existing structure;
- the waiver of three required parking stalls will have an adverse effect on the existing or surrounding uses or parking, traffic, and circulation in West Newton, including adjacent residential streets.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The property is located in the West Newton commercial district, on the north side of Washington Street between Cherry and Elm Streets in a district zoned Business 1. Numerous shops, offices and the West Newton Cinema are also in the immediate

vicinity. Existing restaurants and food establishments in the area include Comella's, Shing Yee Restaurant, Sweet Tomatoes Pizza, Lumiere, Blue Ribbon Barbecue, and Shogun, among others. All of these uses are within the Business 1 District. The subject property is abutted to the north by the City's municipal parking lot, which contains approximately 67 three- and 12-hour metered spaces. A map of municipal parking spaces in the immediate vicinity is attached (*SEE "ATTACHMENT B"*).

B. Site

The Cherry Tree Bar and Grille is part of a one-story multi-tenant commercial building located between Cherry and Elm Streets. This L-shaped building is occupied by Harris Cyclery, Hong Kong Gourmet, the petitioner's space, the former (now vacant) International Dancesport Studios, and Louis Dugal Hair Salon. The commercial tenants in this structure share eight on-site parking spaces to the rear of the building, primarily for employee parking, with access from Cherry Street.

The existing restaurant occupies a mid-block commercial tenant space and is proposing to expand into the adjacent storefront to the east on Washington Street. The restaurant currently has 14 bar seats and 34 dining seats. The additional seating would primarily be booth seating and not used to extend the bar area.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The petitioner is proposing to expand its restaurant use into the adjacent retail space formerly occupied by International Dancesport Studio, both of which are allowed uses in the Business 1 district.

B. Building and Site Design

No alterations or changes to the exterior of the building are proposed at this time. The petitioner has not submitted any information regarding additional signage, but will need to file with the Urban Design Commission if additional signage is contemplated.

Inside the restaurant, the petitioners will create an opening between the existing dining room and the proposed new space. Existing seats will be rearranged slightly to accommodate 28 new seats in the expanded space for a total of 76 seats.

C. Parking and Circulation

Under Section 30-19(d)(13) of the Newton Zoning Ordinances, a restaurant is required to provide one off-street parking space for every three seats and one space for every

three employees on the largest shift. The petitioners are proposing 76 seats with up to nine employees on the largest shift. The proposed expanded restaurant requires 29 parking spaces but does not have any off-street parking. The restaurant has a credit of 18 parking spaces based on its current use plus an additional eight-stall credit from the former occupant, International Dancesport Studios, of the adjacent commercial space the restaurant is proposing to expand into. Using the A-B+C formula per Section 30-19(c)(2) the petitioner is required to provide an additional three parking spaces for its proposed expansion. The petitioner must seek a waiver for the required three parking spaces as they are not able to provide any additional parking.

Directly in front of the building on Washington Street there are metered, on-street parking spaces. Just north of the subject parcel in a lot operated by the City there are approximately 67 three- and 12-hour metered parking spaces. Additional on-street parking is available throughout the West Newton village center and additional parking is also available in lots adjacent to the Massachusetts Turnpike. Some of the larger privately-owned parking lots, including CVS, Boston Sports Club, and the garage on Chestnut and Washington Streets, restrict parking in their lot at any time to customers only.

The Planning Department recommends that the petitioners seek ways to reduce parking demand by patrons and employees and minimize any impacts on the surrounding neighborhood. The goals of the *Comprehensive Plan* to maintain a desirable quality of life would be further supported if the proposed business offered incentives for employees and customers to take advantage of alternative forms of transportation and/or demonstrate how surrounding neighborhoods will benefit from the proposed petition. The Planning Department also recommends that the petitioners consider a monetary contribution to the City in order to mitigate potential parking impacts in the vicinity. The Planning Department notes that the parking facility located along Washington Street and Lucas Court, used during the day for Courthouse “Employee and Jury” parking, could be repaved in order to support additional shared parking opportunities during evening hours. Alternatively, pedestrian countdown signal heads could be added to existing traffic signals in the area. These signals have been shown to reduce pedestrian injuries and to aid in efficient clearing of crosswalks before signal changes by providing information on how much time is left to cross safely.

D. Landscape Screening

The petitioners did not submit a landscape plan for the proposed expanded restaurant and none was required. Nearby street trees appear healthy.

IV. TECHNICAL REVIEW

A. Technical Considerations. The Zoning Review Memorandum dated October 14,

2010 (*SEE “ATTACHMENT C”*) provides an analysis of the proposal with regards to zoning. The petitioner needs to amend Board Order #268-02 to waive an additional three parking stalls (bringing their total waiver to ten stalls) and must seek a special permit for a restaurant with more than 50 seats in the BU-1 zone.

B. Other Reviews. No other reviews were required for this petition.

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum the petitioner is seeking approval through or relief from:

- Section 30-11(d)(9), to allow a restaurant with more than 50 seats in the BU-1 zone
- Section 30-19(c)(2), (c)(3) & 30-19(d), to waive three required parking spaces
- Amend BO #268-02

VI. PETITIONERS' RESPONSIBILITIES

The petition is considered complete at this time. The petitioner, the Planning Department, and the Public Works Department will work together to assess the potential for repaving a nearby parking lot or installing pedestrian countdown signal heads as mitigations for the parking waiver.

ATTACHMENTS

ATTACHMENT A: Board Order #268-02

ATTACHMENT B: Zoning Review Memorandum dated October 14, 2010

ATTACHMENT C: Map of municipal parking lots in West Newton

ATTACHMENT D: Zoning Map

ATTACHMENT E: Land Use Map

#268-02

CITY OF NEWTON

IN BOARD OF ALDERMEN

November 4, 2002

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, hereby grants the following SPECIAL PERMIT TO APPROVE WAIVERS TO THE PARKING ORDINANCE and SITE PLAN APPROVAL in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefor, through its Chairman, Alderman Susan M. Basham:

1. The Board finds that the 7 stall parking waiver is appropriate because:
 - a. Based upon the past history of this restaurant use, which has operated one block away from its proposed new location for a number of years, many of the restaurant's patrons come to restaurant on foot because they either work in the immediate area of the restaurant or drive to West Newton for the purpose of making multiple stops within the West Newton center;
 - b. The subject property is located across the street from a municipal parking facility; and
 - c. Literal compliance with the parking ordinance is impossible because there is no space available on-site to provide additional parking.
2. The Board finds that the public convenience and welfare will be served by granting the parking waiver because it will allow an established restaurant to continue to serve the neighborhood in a slightly larger space, with an increase of 3 seats more than at the restaurant's current location at 1365 Washington Street.

PETITION NUMBER: #268-02

PETITIONERS: Daniel Haverty/Kenmore Realty Corporation

LOCATION: 1349 Washington Street, Ward 3, West Newton, Section 33, Block 12, Lot 1, containing approximately 12,845 sq. ft. of land.

OWNERS: Daniel Haverty/Kenmore Realty Corporation

ADDRESS OF OWNERS: 1349 Washington Street
West Newton, MA

TO BE USED FOR: A 7 stall parking waiver to allow for an increase in seating from 27 to 28 seats at the new restaurant to be located 1349 Washington Street.

CONSTRUCTION: N/A

EXPLANATORY NOTE: The following special permits are granted: Section 30-19(d) to waive the 7 parking stalls required to allow for an increase in the number of seats from 27 to 48.

Land referred to is located in a Business 1 District.

Approved, subject to the following conditions:

1. The 48 seats shall be consistent with 27-seat plan provided by the petitioner and shall be laid out in such a way to comply with all building and life safety codes.
2. The waiver of 7 required parking stalls is for a restaurant use at the location in the building which is currently being renovated by the petitioner for a restaurant use per Building Permit No. 272-03, issued on 8/14/02, and shall not be transferable to any other use in the building or to any other location within the building.
3. The waiver of 7 required parking stalls shall expire in the event that the space within the building where the restaurant use is currently relocating to, as defined in Condition 2., above, ceases to be used for restaurant purposes.
4. The 21 additional seats approved by this SPECIAL PERMIT and SITE PLAN APPROVAL, per the conditions herewith, shall not be utilized until:
 - a. The petitioners shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a Certified copy of this Board Order granting this SPECIAL PERMIT and SITE PLAN APPROVAL.
 - b. A certified copy of such recorded notices shall have been filed with the City Clerk, the Inspectional Services Department and the Department of Planning and Development.
 - c. The petitioner restaurant shall have received a license permitting the increased seating capacity from the Newton Licensing Commission.

Under Suspension of Rules
Readings Waived and Approved
24 yeas 0 nays

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on November 13, 2002. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:

(SGD) EDWARD G. ENGLISH, City Clerk
Clerk of the Board of Aldermen

I, Edward G. English, as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on _____ and that NO APPEAL to said decision pursuant to M.G.Laws Chapter 40, Section 17 has been filed thereto.

ATTEST:

(SGD) EDWARD G. ENGLISH, City Clerk
Clerk of the Board of Aldermen

Zoning Review Memorandum

Date: 10/14/10

To: John Lojek, Commissioner of Inspectional Services

Fr: Seth Zeren, Chief Zoning Code Official
Eve Tapper, Chief Planner for Current Planning

Cc: Daniel Haverty, Owner of the Cherry Tree Restaurant
Candace Havens, Interim Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to increase seating in existing restaurant

Applicant: Daniel Haverty	
Site: 1347-9 Washington Street	SBL: 33012 0001
Zoning: BU1	Lot Area: 12,845 square feet
Current use: Restaurant with 48 seats	Proposed use: Restaurant over 50 seats

Background:

The Cherry Tree restaurant is located at 1349 Washington Street in Newton, MA. The owner is proposing to expand his restaurant use into the adjoining retail bay, most recently occupied by Dancesport Studio. The existing restaurant has 48 seats and six employees on the largest shift.

The following review is based on plans and materials submitted to date as noted below.

Plans and materials reviewed:

- Floor Plan, unsigned, undated
- Seating Plan, unsigned, dated 9/1/10

Administrative determinations:

1. The applicant proposes to increase the number of seats from 48 to 76. Per §30-11(d)(9), a restaurant having over 50 seats requires a special permit from the Board of Aldermen.
2. The applicant proposes to increase the size of his restaurant to 76 seats and increase the size of the largest shift to nine employees. Under §30-19(d)(13) a restaurant is required to provide one off-street parking space for every three seats and one space for every three employees on the largest shift. The proposed expansion would require a total of 29 parking spaces (see table below). The restaurant currently has zero off-street parking spaces and a credit of 18 parking spaces based on its current legal use. The applicant proposes to expand into the adjacent retail space, formerly occupied by Dancesport Studio, a service use.

Using the A-B+C formula per §30-19(c)(2) the restaurant is required to provide an additional three parking spaces (see calculations below). The applicant proposes no additional off street parking spaces; therefore the applicant must seek a special permit from the Board of Aldermen per §30-19(c)(3) to waive three required parking spaces.

Proposed	Parking Formula	Required Parking
A restaurant with 76 seats and 9 employees on the largest shift	1 stall per 3 seats, 1 stall per 3 employees	29 (A)
Existing	Parking Formula	Parking Credits
A restaurant with 48 seats and 6 employees on the largest shift	1 stall per 3 seats, 1 stall per 3 employees	18 (B)
Service use with 1,536 square feet and 6 employees on the largest shift	1 stall per 250 square feet, 1 stall per 3 employees	8 (B)
Off-street parking spaces		0 (C)
Additional Spaces Required:		3

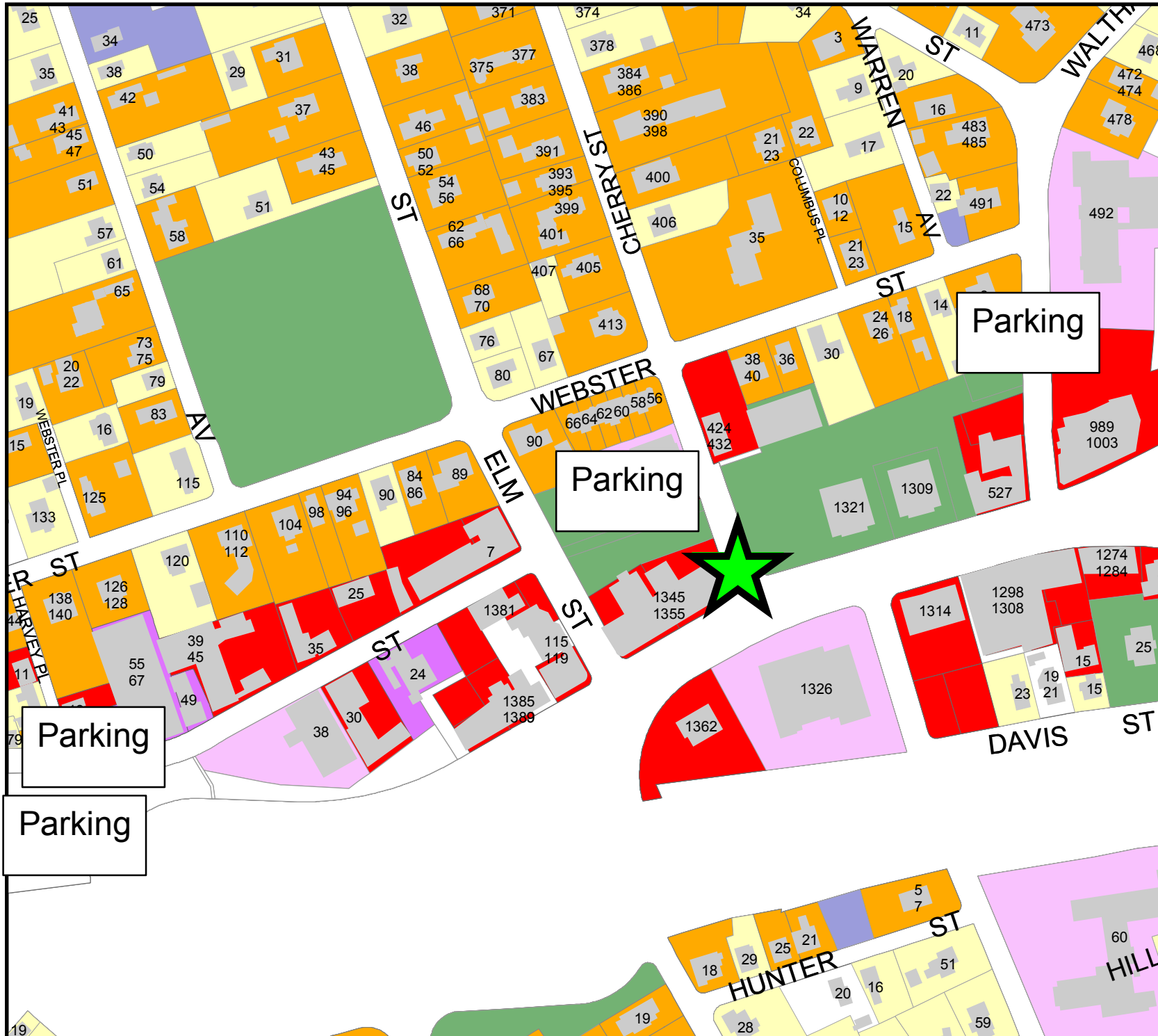
Calculation per §30-19(c)(2): A (26) – B (16+8) + C (0) = Required number of parking stalls (3)

3. See “Zoning Relief Summary” below:

<i>Zoning Relief Summary</i>		
<i>Ordinance</i>	<i>Use</i>	<i>Action Required</i>
§30-11(d)(9)	Allow a restaurant over 50 seats in a BU-1 zone	S.P. per §30-24
<i>Ordinance</i>	<i>Parking</i>	<i>Action Required</i>
§30-19(d), 30-19(c)(2), 30-19(c)(3)	Waive three required parking spaces	S.P. per §30-24

Attachment "C"

Municipal Parking Lots West Newton



Legend

- 1347-1355 Wash. St.
- Building Outlines
- Single Family Residential
- Multifamily Residential
- Commercial
- Industrial
- Mixed Use
- Vacant Land
- Golf Course
- Open Space
- Private Educational
- Nonprofit Organizations
- Public Housing
- Tax Exempt
- Unspecified



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

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


MAP DATE: January 07, 2011

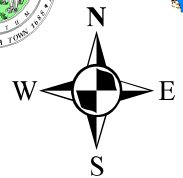
Attachment "D"

Zoning Map

1347-1355
Washington St.

Legend

-  1347-1355 Wash. St.
-  Building Outlines
-  Business 1
-  Manufacturing
-  Multi-Res. 1
-  Public Use



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MAP DATE: January 07, 2011

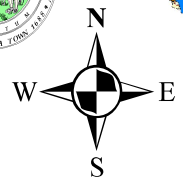


1347-1355
Washington St.

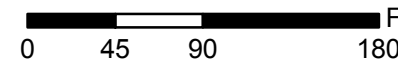


Legend

- 1347-1355 Wash. St.
- Building Outlines
- Single Family Residential
- Multifamily Residential
- Commercial
- Industrial
- Open Space
- Nonprofit Organizations
- Unspecified



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